SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No.

MRS. MARGARET SHEA LYNCH, PETITIONER,

vs.

THE UNITED STATES OF AMERICA.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT.

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IN UNITED STATES DISTRICT COURT FOR THE ALBANY DIVISION OF THE MIDDLE DISTRICT OF GEORGIA

MRS. MARGARET SHEA LYNCH, Complainant, Appellant,

versus

THE UNITED STATES, Defendant, Appellee

[fol. 3] COMPLAINT—Filed April 21, 1933

The petition of Mrs. Margaret Shea Lynch respectfully shows:

Count One

1

That petitioner is a citizen of the United States of America, residing within said district of said state.

2

This suit is brought against the United States of America under the laws of the United States, and particularly arising under the World War Veterans Relief Laws, on a contract of United States War Risk Insurance issued to Thomas Stephen Lynch, late of Albany, Georgia, the son of petitioner, now deceased.

3

Said Thomas Stephen Lynch, hereinafter called the insured, enlisted for four years, or for the duration of the war, in the United States Navy, on the 30th day of May, 1918, and was released from active duty on —— —, 1919.

4

That during said period of said naval service, desiring to be insured against the risk of death and permanent disability, the insured applied for a policy of war risk insurance in the sum of $10,000.00, naming therein your petitioner as beneficiary; and thereafter said policy was duly issued to the insured.

[—fol. 4—]

[fol. 4] 5

That there was deducted by defendant from the monthly pay of the insured the premiums on said policy of insurance until the discharge from service of the insured, and that thereafter the insured remitted to the defendant the monthly installments of premiums due on said policy up to and including the month of July, 1919.

6

That the premium due on August 1, 1919, was not paid, by the insured, and said insurance lapsed for non-payment of premiums on September 1, 1919, unless said policy of insurance matured before that date.

7

That during the life of said insured, and before any default in payment of premiums, the insured became totally and permanently disabled from following continuously any substantially gainful occupation, as a result of active pulmonary tuberculosis contracted during his service in the U. S. Navy.

8

That by reason of the foregoing the insured became and was totally and permanently disabled on or before the 1st day of September, 1919, and became entitled to recover from defendant, under the terms of said contract of insurance, the sum of $57.50 per month for each month thereafter, for a period of two hundred forty (240) months.

9

That as a result of said active pulmonary tuberculosis the insured died, intestate, on the 27th day of November, 1924, without having collected said insurance, and without having married; and same is now payable to your petitioner as beneficiary thereof.

[fol. 5] 10

That your petitioner made due proof of said death to the defendant, furnishing the statutory death certificate, and requested payment of aforesaid amounts.

11

That on or about September 8, 1932, the defendant called on petitioner to furnish supporting evidence from the physician who attended and treated the insured during his last illness, showing the condition of the insured when examined by said physician prior to the death of the insured, and also called on petitioner for additional evidence in support of said claim.

12

That pursuant to said requests petitioner did obtain and submit a certificate and an affidavit of said physician, and numerous affidavits of friends and business associates of the insured, touching his physical condition during the time between his discharge and his death; that on February 20, 1933, petitioner presented, through her attorney, the evidence and a brief of the law to the Insurance Claims Council, Veterans' Administration, at Washington, D. C.; and that said Council thereafter had the said claim under consideration.

Petitioner shows, however, that the defendant did, on the 29th day of March, decline and refuse to pay said claim. A copy of the letter denying said claim is hereto attached and made a part of this petition, marked Exhibit A.

13

That by reason of said denial of the claim, a disagreement has arisen under said contract of war risk insurance between petitioner and defendant.

[fol. 6]

14

That the provisions of the act of Congress of March 20, 1933, entitled, "An act to maintain the credit of the United States Government," specifically repealed all laws granting or pertaining to yearly renewable term insurance, except as to causes wherein contracts of yearly renewable term insurance have matured prior to March 20, 1933, and under which payments have been commenced or in which judgments have been rendered in a court of competent jurisdiction or any suit on a contract of yearly renewable term insurance or in which judgment may hereafter be rendered in any suit then pending.

That said act is retroactive and retrospective in its scope, is discriminatory and unreasonable, and violates Amendment V of the Constitution of the United States of America, which provides: "No person shall * * * be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation."

15

That the provisions of said Act of Congress of March 20, 1933, as follows:

"Title I, Sec. 1. That subject to such requirements and limitations as shall be contained in regulations to be issued by the President, and within the limits of appropriations made by Congress, the following classes of persons may be paid a pension," and in Sec. 3 thereof, "The President is authorized to prescribe by regulation the minimum degrees of disability and such higher degrees of disability as in his judgment should be recognized and prescribe the rate of pension payable for each such degree of disability," violate Article I, Sec. 1, of the Constitution of the United [fol. 7] States of America, which provides: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives," and that said sections are, therefore, invalid and void.

16

That the provisions of the Act of Congress of March 20, 1933, as follows:

"Sec. 5. All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title, or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision," violate Article III, Sec. 1, of the Constitution of the United States of America, which provides: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and further violates Amendment V of the said Constitution, which provides: "No person shall * * * be deprived of life, lib-

erty, or property without due process of law; nor shall private property be taken for public use without just compensation."

17

That the provisions of said act of Congress of March 20, 1933, as follows:

"Sec. 5. The Administrator of Veterans' Affairs is hereby authorized in carrying out the provisions of Title I of this act or any other pension act to delegate authority to render decision to such person or persons as he may find necessary. Within the limitations of such delegations, [fol. 8] any decisions rendered by such person or persons shall have the same force and effect as though rendered by the Administrator of Veterans' Affairs. The President shall personally approve all regulations issued under the provisions of this title," violate Article III, Sec. 1, of the Constitution of the United States, which provides: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and further violates Amendment V of said Constitution, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

18

That the provisions of the Act of Congress of March 20, 1933, as follows:

"No person who is entitled to any benefits under this title shall participate in any determination or decision with respect to any claim to benefits under this title," violates Article IV, Sec. 2, of the Constitution of the United States, which provides: "The citizens of each state shall be entitled to all privileges and immunities of the citizens of the several states," and further violates the provisions of Amendment V of said Constitution which provides: "No person shall * * * be deprived of life, liberty, or property without due process of law; nor shall private property be taken for public use without just compensation," and further is discriminatory, unreasonable, and therefore, void.

[fol. 9] 19

Petitioner shows that she is entitled, as beneficiary under said policy, to a judgment against the United States of America for the said principal sum of $57.50 per month commencing August 1, 1919, for a total period of two hundred forty (240) months, the defendant being indebted to your petitioner by reason of the foregoing facts.

Wherefore, petitioner prays that she do have and recover a judgment against the United States in said sum, and that she do have a jury trial of this case.

Count Two

1

That petitioner is a citizen of the United States of America, residing within said district of said state.

2

That this suit is brought against the United States of America under the laws of the United States, and particularly arising under the World War Veterans Relief Laws, on a contract of United States War Risk Insurance issued to Thomas Stephen Lynch, late of Albany, Georgia, the son of petitioner, now deceased.

3

Said Thomas Stephen Lynch, hereinafter called the insured, enlisted for four years, or for the duration of the war, in the United States Navy, on the 30th day of May, 1918, and was released from active duty on ——, 1919.

[fol. 10] 4

That during said period of said naval service, desiring to be insured against the risk of death and permanent disability, the insured applied for a policy of war risk insurance in the sum of $10,000.00, naming therein your petitioner as beneficiary; and thereafter said policy was duly issued to the insured.

5

That there was deducted by defendant from the monthly pay of the insured the premiums on said policy of insur-

ance until the discharge from service of the insured, and that thereafter the insured remitted to the defendant the monthly installments of premiums due on said policy up to and including the month of July, 1919.

6

That the premium due August 1, 1919, was not paid by the insured and said insurance lapsed for non-payment of premiums on September 1, 1919, unless the insured was suffering from a compensable disability for which compensation was not collected and said insured was entitled to said compensation remaining uncollected.

7

That during the life of said insured, and before any default in the payment of premiums, the insured suffered from active pulmonary tuberculosis, which was a compensable disability, and said compensation was not collected during the life of the insured, although the insured was entitled to the same. That said active pulmonary tuberculosis was contracted by the insured during his said naval service.

[fol. 11] 8

That by reason of the foregoing, said uncollected compensation, computed at the rate provided by section 302 of the War Risk Insurance Act, as amended on December 24, 1919, Chapter 16, 41 Statutes, page 371, would and did purchase, if applied as premiums when due, the full amount of $10,000.00 insurance represented by said policy.

9

That as a result of said active pulmonary tuberculosis the insured dies, intestate, on the 27th day of November, 1924, without having collected said insurance, and without having married; and same is now payable to your petitioner as beneficiary thereof.

10

That your petitioner made due proof of said death to the defendant, furnishing the statutory death certificate, and requested payment of aforesaid amounts.

11

That on or about September 8, 1932, the defendant called on petitioner to furnish supporting evidence from the physician who attended and treated the insured during his last illness, showing the condition of the insured when examined by said physician prior to the death of the insured, and also called on petitioner for additional evidence in support of said claim.

12

That pursuant to said requests petitioner did obtain and submit a certificate and an affidavit of said physician, and numerous affidavits of friends and business associates of the insured, touching his physical condition during the time between his discharge and his death; that on February 20, [fol. 12] 1933, petitioner presented, through her attorney, the evidence and a brief of the law to the insurance Claims Council, Veterans Administration, at Washington, D. C.; and that said Council thereafter had the said claim under consideration.

Petitioner shows, however, that the defendant did, on the 29th day of March, decline and refuse to pay said claim. A copy of the letter denying said claim is hereto attached and made a part of this petition, marked Exhibit A.

13

That by reason of said denial of the claim, a disagreement has arisen under said contract of war risk insurance between petitioner and defendant.

14

That the provisions of the act of Congress of March 20, 1933, entitled, "An act to maintain the credit of the United States Government," specifically repealed all laws granting or pertaining to yearly renewable term insurance, except as to cases wherein contracts of yearly renewable term insurance have matured prior to March 20, 1933, and under which payments have been commenced or in which judgments have been rendered in a court of competent jurisdiction or any suit on a contract of yearly renewable term insurance or in which judgments may hereafter be rendered in any suit then pending.

That said act is retroactive and retrospective in its scope, is discriminatory and unreasonable, and violates Amendment V of the constitution of the United States of America, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

[fol. 13] 15

That the provisions of said Act of Congress of March 20, 1933, as follows:

"Title I, Sec. 1. That subject to such requirements and limitations as shall be contained in regulations to be issued by the President, and within the limits of appropriations made by Congress, the following classes of persons may be paid a pension," and in Section 3 thereof, "The President is authorized to prescribe by regulation the minimum degrees of disability and such higher degrees of disability as in his judgment should be recognized and prescribe the rate of pension payable for each such degree of disability," violate Article I, Sec. 1, of the Constitution of the United States of America, which provides: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives," and that said sections are, therefore, invalid and void.

16

That the provisions of the Act of Congress of March 20, 1933, as follows:

"Sec. 5. All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title, or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact, and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision," violate Article III, Sec. 1, of the Constitution of the United States of America, which provides: "The [fol. 14] judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and further violates Amendment V of said Constitution, which

provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

17

That the provisions of said act of Congress of March 20, 1933, as follows:

Sec. 5. The Administrator of Veterans' Affairs is hereby authorized in carrying out the provisions of Title I of this act or any other pension act to delegate authority to render decisions to such person or persons as he may find necessary. Within the limitations of such delegations, and decisions rendered by such person or persons shall have the same force and effect as though rendered by the Administrator of Veterans' Affairs. The President shall personally approve all regulations issued under the provisions of this title," violate Article III, Sec. 1, of the Constitution of the United States, which provides: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and further violates Amendment V of said Constitution, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

[fol. 15] 18

That the provisions of the Act of Congress of March 20, 1933, as follows:

"No person who is entitled to any benefits under this title shall participate in any determination or decision with respect to any claim to benefits under this title", violates Article IV, Sec. 2, of the constitution of the United States, which provides: "The citizens of each state shall be entitled to all privileges and immunities of the citizens of the several states", and further violates the provisions of Amendment V of said constitution, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation", and further is discriminatory, unreasonable, and, therefore void.

Petitioner shows that she is entitled, as beneficiary under said policy, to a judgment against the United States of America for the said principal sum of $57,50 per month commencing August 1, 1919, for a total period of two hundred forty (240) months, the defendant being indebted to petitioner by reason of the foregoing facts.

Wherefore, petitioner prays that she do have and recover a judgment against the United States in said sum, and that she do have a jury trial of this case.

John J. McCreary, Attorney for Petitioner. Post Office Address: Macon, Georgia.

[fol. 16] EXHIBIT "A" TO COMPLAINT

Veterans' Administration, Washington

March 29, 1933.

Your File Reference: —.
In Reply Refer to FDBB
Lynch, Thomas S. XC 646 846.

Mr. John J. McCreary, Attorney at Law, Macon, Georgia.

DEAR SIR: The provisions of the act of March 20, 1933, entitled "An Act to Maintain the Credit of the United States Government", specifically repealed all laws granting or pertaining to yearly renewable term insurance except as to cases wherein contracts of yearly renewable term insurance have matured prior to March 20, 1933, and under which payments have been commences, or in which judgments have been rendered in a court of competent jurisdiction in any suit on a contract of yearly renewable term insurance or in which judgments may hereafter be rendered in any such suit now pending.

Under these provisions favorable consideration of this claim for benefits under a contract of yearly renewable term insurance is barred and no further action in connection with this claim can be taken by the Veterans' Administration. Under these circumstances I regret to advise you that further inquiry of correspondence from you seeking further consideration of this claim will necessarily be of no avail.

The case folder is being retained in the Veterans' Administration at Washintgon, D. C.

Respectfully; H. E. McCoy, Director of Insurance.

Insurance Form 851.

[fol. 17] IN UNITED STATES DISTRICT COURT

[Title omitted]

AFFIDAVIT AND ORDER ALLOWING COMPLAINANT TO PROSECUTE ACTION WITHOUT PREPAYMENT OF COSTS

STATE OF GEORGIA,
County of Bibb:

Before me, an officer authorized by law to administer oaths, personally comes Mrs. Margaret Shea Lynch, the above named plaintiff, who, being duly sworn, on oath says that her counsel has advised her that she has a good cause of action in said case, and that from her poverty she is unable to pay the costs or give security therefor.

Mrs. Margaret Shea Lynch.

Sworn to and subscribed before me, this the 20 day of April, 1933. Margaret Haverfield, Notary Public, State at Large.

Order of Court

It is ordered that the Complainant in the above-entitled action be and she hereby is permitter to prosecute said action to conclusion without prepayment of fees or costs.

Bascom S. Deaver, United States Judge.

[fol. 18] IN UNITED STATES DISTRICT COURT

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed April 21, 1933

Service of the within complaint is acknowledged; copy thereof received.

This 14th day of April, 1933.

W. A. Bootle, U. S. Attorney, Middle District of Georgia.

GEORGIA,
Bibb County:

I certify that I sent by registered mail (article #12329) from Macon, Georgia, to the Attorney General, Washington, D. C., a copy of the within complaint on April 14, 1933.
John J. McCreary, Attorney for Plaintiff.

[Filed endorsement omitted.]

[fol. 12] IN UNITED STATES DISTRICT COURT

[Title omitted]

DEMURRER—Filed May 8, 1933

Comes now the defendant, and before answering plaintiff's petition, demurs to the same upon the following grounds:

1

Defendant demurs generally to said petition upon the ground that the same sets out no cause of action against this defendant.

2

Defendant demurs generally to said petition upon the ground that the same is filed against the Sovereign, and shows upon its face that it is filed without consent of the Sovereign.

3

Defendant demurs generally to said petition upon the ground that the same is filed against the Sovereign, and shows upon its face that the Congress of the United States prior to the filing of this petition withdrew the consent of the Sovereign to be sued in such cases as the one attempted to be asserted by this petition.

4

Defendant demurs generally to both counts of said petition upon the ground that it appears upon the face on said petition that there exists no disagreement between the

plaintiff and the defendant, such as was required by the Former Acts of Congress permitting the Government to be sued, before such Acts were repealed.

[fol. 20]

5

Defendant demurs specially to Paragraphs Fifteen, Sixteen, Seventeen and Eighteen of Count One of said petition, and to Paragraphs Fifteen, Sixteen, Seventeen and Eighteen of the Second Count of said petition, upon the ground that the allegations contained in said Paragraphs are immaterial, irrelevant and surplusage.

6

Defendant demurs generally to the Second Count of said petition upon the ground that the same nowhere alleges facts sufficient to bring into play the provisions of Section 305 of the World War Veterans Act, for that said Count does not allege that the Veterans Administration had rated the insured as having a compensable disability.

7

Defendant demurs generally to Paragraphs Seven and Eight of the Second Count of said petition upon the ground that the allegations contained therein are immaterial, irrelevant and surplusage.

Wherefore, defendant prays that these grounds of demurrer be inquired into and sustained, and that said petition in its entirety be dismissed.

W. A. Bootle, United States Attorney, Attorney for Defendant.

[File endorsement omitted.]

[fol. 21] In United States District Court

[Title omitted]

Amendments to Complaint—Filed June 21, 1933

Comes now the above named plaintiff, who amends her complaint herein filed, as follows:

Count One

20

That the regulations issued pursuant to the act of Congress of March 20, 1933, entitled "An act to maintain the credit of the United States", include the following:

"V. Except as stated above no payments may hereafter be made under contracts of yearly renewable term insurance (including automatic insurance) and all pending claims and claims hereafter filed for such benefits shall be disallowed."

That said regulation violates the provisions of Amendment V of the constitution of the United States, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation," and further is retroactive in its scope, is discriminatory and unreasonable, and therefore, void.

21

The said defendant is hereby notified to have and produce on each and every trial of this case all the documents in possession of defendant relating to service of the insured, all letters by or in behalf of the insured relating to his service and to said insurance and all affidavits and [fol. 22] other evidence submitted by or in behalf of petitioner in support of said claim for insurance, the same to be used by petitioner as evidence pertinent and material to her case.

Count Two

A

That petitioner made application to the defendant for an allowance of compensation by reason of the disability and death of the insured, and supported said application by proofs of said disability on the form of affidavits and requested payments of the same, but that the defendant never allowed said claim and never denied said claim on its merits, but that the same remained pending in the United States Veterans Bureau until March 20, 1933.

20

That the regulations issued pursuant to the act of Congress of March 20, 1933, entitled, "An act to maintain the credit of the United States", include the following:

"V. Except as stated above, no payments may hereafter be made under contracts of yearly renewable term insurance (including automatic insurance) and all pending claims and claims hereafter filed for such benefits shall be disallowed."

That said regulation violates the provisions of Amendment V of the constitution of the United States, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation", and further is retroactive in its scope, is discriminatory and unreasonable, and therefore void.

[fol. 23] 21

That said defendant is hereby notified to have and produce on each and every trial of this case all documents in possession of defendant relating to service of the insured, all letters sent by or in behalf of the insured relating to his service and to said insurance and all affidavits and other evidence submitted by or in behalf of petitioner in support of said claim for insurance, the same to be used by petitioner as evidence pertinent and material to her case.

Wherefore, petitioner prays that said amendment be allowed by this court.

John J. McCreary, Attorney for Petitioner.

The foregoing amendment is allowed, subject to demurrer by the defendant.

This 21 day of June, 1933.

Bascom S. Deaver, U. S. Judge, District of Georgia.

[File endorsement omitted.]

[fol. 24] IN UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF GEORGIA, ALBANY DIVISION

At Law. No. 148

MRS. MARGARET SHEA LYNCH

vs.

UNITED STATES

ORDER SUSTAINING DEMURRER—Filed June 21, 1933

The above matter coming on to be heard on the demurrer of the defendant to plaintiff's petition, and plaintiff having amended her petition, and defendant having renewed its demurrer to the petition as amended, and after argument on said demurrer and consideration thereof;

It is hereby ordered that said demurrer be sustained and that plaintiff's petition as amended be dismissed.

This 21st day of June, 1933.

Bascom S. Deaver, United States Judge.

[fol. 25] IN UNITED STATES DISTRICT COURT

[Title omitted]

PETITION FOR APPEAL—Filed July 21, 1933

To the Honorable Bascom S. Deaver, Judge of the District Court of the United States for the Middle District of Georgia:

The petition of Mrs. Margaret Shea Lynch respectfully shows:

1

Petitioner is a citizen of the United States, residing within the Middle District of Georgia and is the above named plaintiff.

2

Petitioner filed suit against the United States of America under the laws of the United States and particularly arising under the World War Veterans Relief Laws on a con-

tract of United States War Risk Insurance issued to Thomas Stephen Lynch, late of Albany, Georgia, the son of petitioner, now deceased, and had said suit served on defendant as provided by law.

3

Said defendant interposed a general demurrer to said complaint and the issue of law came on for argument before Your Honor on the 1st day of June, 1933, pursuant to assignment.

[fol. 26] 4

Your petitioner tendered an amendment to her original complaint which amendment was allowed by the court, subject to demurrer.

5

The defendant thereupon renewed its demurrer to said petition as amended and the court thereupon sustained said demurrer and dismissed petitioner's complaint.

6

Petitioner shows that she desires to appeal from the judgment sustaining said defendan'ts general demurrer and dismissing petitioner's complaint to the Circuit Court of Appeals of the United States for the Fifth Circuit and that she verily believes that she is entitled to the redress she seeks in such appeal.

7

Petitioner shows that she has been advised by her counsel, John J. McCreary, Esquire, Macon, Georgia, that she has good ground for appeal.

8

Petitioner shows that her ground for appeal is that the judgment sustaining said demurrer was contrary to law for that the provisions of "an act to maintain the credit of the United States" quoted in said complaint were unconstitutional, null and void for the reasons specified in said complaint.

[fol. 27] 9

Petitioner shows that because of her poverty she is unable to pay the costs of said appeal or the costs for the printing of the record in the appellate court, or to give security for the same.

Petitioner presents this petition for appeal within three months of the date of the judgment appealed from.

Wherefore, petitioner prays an order of the Court allowing said appeal, to be prosecuted in forma pauperis.

And petitioner will ever pray.

This 18th day of July, 1933.

John J. McCreary, Attorney for Petitioner.

[fol. 28] In United States District Court

[Titled omitted]

Affidavit—Filed July 21, 1933

Georgia,
Bibb County:

Mrs. Margaret Shea Lynch, being duly sworn, deposes and says that she is a citizen of the United States of America; that she is plaintiff in the above captioned case, and is entitled to prosecute this appeal.

Deponent further states the fact to be that because of her poverty she is unable to pay the costs of said appeal or to give security for the same; that she believes she is entitled to the redress she seeks by such appeal, and that the nature of her cause of action is correctly and concisely set out in her petition filed in said case.

Deponent further states that this affidavit is made and filed for the purpose of availing herself of the rights and privileges provided by the act of Congress, chapter 209, approved July 20, A. D. 1892, and acts amendatory thereto.

Mrs. Margaret Shea Lynch.

Sworn to and subscribed before me this 8th day of July, 1933. Margaret Haverfield, Notary Public, State of Georgia at Large.

[fol. 29] IN UNITED STATES DISTRICT COURT

[Title omitted]

ORDER GRANTING APPEAL—Filed July 21, 1933

Mrs. Margaret Shea Lynch, the plaintiff in said case, desiring to appeal from the judgment of the court sustaining defendant's demurrer and dismissing said complaint, and having filed her petition for appeal and her assignment of errors, said appeal is allowed.

Said plaintiff having prayed to be allowed to appeal in forma pauperis, on her affidavit of poverty filed in accordance with the statute, it is ordered that she be allowed to prosecute her appeal to the Circuit Court of Appeals for the Fifth Circuit without making a deposit or executing a bond for costs, because of her poverty, as aforesaid, and it is ordered that all judicial officers who have occasion to perform services herein shall perform same as if the deposit for costs or security for costs had been given, as in such cases made and provided.

At Macon, within the Middle District of Georgia, this 21st day of July, 1933.

Bascom S. Deaver, U. S. District Judge.

[fol. 30] IN UNITED STATES DISTRICT COURT

[Title omitted]

ASSIGNMENT OF ERRORS BY APPELLANT—Filed July 21, 1933

Mrs. Margaret Shea Lynch, plaintiff, as appellant respectfully tenders with her appeal to the Circuit Court of Appeals for the Fifth Circuit from the judgment of June 21st, 1933, sustaining defendant's demurrer and dismissing her petition, the following assignment of errors upon which she will rely in prosecuting said appeal:

1

That said act of March 20, 1933, entitled, "An act to maintain the credit of the United States government", repealing the laws granting or pertaining to yearly renewable term insurance and barring plaintiff's pre-existing rights,

is retroactive and retrospective in its scope, is discriminatory and unreasonable, and violates Amendment V of the constitution of the United States of America, which provides: "No person shall * * * be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use without just compensation."

[fol. 31]

2

That Title I, Sec. 1, of said act violates Article I, Sec. 1, of the constitution of the United States of America, which provides: "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives," and that said section is therefore, invalid and void.

3

That Title I, Sec. 5, of said act of March 20, 1933, violates Article III, Sec. 1, of the constitution of the United States of America, which provides: "The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish," and further violates Amendment V, quoted above.

4

That the provisions of said act of March 20, 1933, as follows: "No person who is entitled to any benefits under this title shall participate in any determination or decision with respect to any claim to benefits under this title," violates Article IV, Sec. 2, of the constitution of the United States, which provides: "The citizens of each State shall be entitled to all privileges and immunities of the citizens of the several states," and further violates the provisions of Amendment V, of said constitution, quoted above.

5

That the regulation issued pursuant to said act of March 20, 1933, as follows: "V. Except as stated above no payments will hereafter be made under contracts of yearly [fol. 32] renewable term insurance (including automatic insurance) and all pending claims and claims hereafter filed for such benefits shall be disallowed," violates the provi-

sions of Amendment V of the constitution of the United States of America as quoted above.

6

That the court erred in sustaining the defendant's demurrer to plaintiff's petition as amended and in dismissing the petition, and same was contrary to law.

Wherefore, plaintiff prays that the judgment of the said district court be reversed.

John J. McCreary, Attorney for Plaintiff.

[File endorsement omitted.]

[fol. 33] Citation in usual form, filed July 21, 1933, omitted in printing.

[fol. 34] In United States District Court

[Title omitted]

Præcipe for Transcript of Record—Filed July 21, 1933

To the Clerk of said Court:

You are requested to certify a transcript of record to be filed in the United States Circuit Court of Appeals for the Fifth Circuit, pursuant to an appeal allowed in the above entitled cause, and to include in such transcript of record the following and no other papers or exhibits, to wit:

1. Plaintiff's original petition.
2. Defendant's demurrer.
3. Plaintiff's amendment.
4. Judgment sustaining defendant's demurrer.
5. Plaintiff's Appeal.
6. Order allowing appeal.
7. Assignment of errors by appellant.
8. Citation.
9. Præcipe.

10. Agreement to præcipe.
11. Acknowledgment of service.

Respectfully, John J. McCreary, Attorney for Plaintiff (Appellant). Post Office: Macon, Georgia.

[fol. 35] IN UNITED STATES DISTRICT COURT

[Title omitted]

AGREEMENT TO PRÆCIPE—Filed July 21, 1933

We hereby agree that the foregoing praecipe is correct; that the records, documents, papers and proceedings therein set forth are sufficient for a complete record in this cause on appeal, and we hereby adopt the foregoing as a list designated by each of the parties to this cause to complete said transcript, and we hereby waive the issuance and service of notice upon any party hereto, and agree that said præcipe shall be obeyed by, and acted upon by, the clerk as fully and to all intents and purposes in the same manner as if said præcipe had been regularly filed and a true copy thereof served upon each party hereto.

A. Edward Smith, Asst. U. S. Attorney, Attorneys for Defendant (Appellee).

[fol. 36] IN UNITED STATES DISTRICT COURT

[Title omitted]

ACKNOWLEDGMENT OF SERVICE—Filed July 21, 1933

The above named defendant, as appellee, acknowledges service of the following portions of the record in the above stated case, by receiving duplicate copy thereof; and waives all other and further service:

1. The appeal of Mrs. Margaret Shea Lynch, plaintiff, as appellant.
2. The order allowing said appeal.
3. The assignment of errors by appellant.
4. The citation.
5. The præcipe.

A. Edward Smith, Asst. United States Attorney, Middle District of Georgia.

[fol. 37] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 38] Minute entry of argument and submission, Oct. 10, 1933, omitted in printing.

[fol. 39] IN UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 7071

MARGARET SHEA LYNCH, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

In Forma Pauperis

Appeal from the District Court of the United States for the Middle District of Georgia

(November 3, 1933)

Before Bryan, Foster and Hutcheson, Circuit Judges

OPINION OF THE COURT—Filed November 3, 1933

FOSTER, Circuit Judge:

In April, 1933, appellant filed suit as beneficiary to recover on a policy of War Risk Insurance in the sum of $10,000. issued to her son while he was enlisted in the United States Navy. The material facts disclosed by the allegations of the petition are these. The policy was kept in force by the payment of premiums until September 1st, [fol. 40] 1919. No premiums were thereafter paid. The insured was totally and permanently disabled before September 1st, 1919, and the policy therefore matured. He died November 27, 1924. By reason of his total and permanent disability, the insured was entitled to compensation sufficient to pay the premiums on the policy until it matured by his death. No compensation was ever paid him. Appellant presented the claim for payment of the

insurance on February 20, 1933, which claim was denied on March 28, 1933, and a disagreement thereby arose.

The United States demurred to the complaint on the ground that the Court was without jurisdiction to entertain the suit because of the provisions of the Act of March 20, 1933, entitled An Act to Maintain the Credit of the United States Government. The demurrer was sustained. This appeal followed.

Section 7 of the Act of March 20, 1933, repeals all public laws granting compensation and disability allowances to veterans and all laws granting or pertaining to yearly renewable term insurance, with certain exceptions not material to this case, but in general terms vests in the Administrator of Veterans Affairs, under the general direction of the President, authority to review and pass upon such claims. Section 5 of the Act provides: "All decisions rendered by the Administrator of Veterans' Affairs under the provisions of this title, or the regulations issued pursuant thereto, shall be final and conclusive on all questions of law and fact and no other official or court of the United States shall have jurisdiction to review by mandamus or otherwise any such decision."

Appellant contends that the policy of insurance sued upon is a contract in which she has a vested right; that the Act of March 20th, 1933, impairs the obligation of that [fol. 41] contract and deprives her of property without due process of law, in violation of the Fifth Amendment, and is therefore invalid; that under the Tucker Act, not repealed, the District Court had jurisdiction to entertain the suit as it was based on a breach of contract.

We need not discuss in detail the interesting questions raised by appellant. It is elementary that the United States may not be sued without her consent. Section 5 of the Act of March 20, 1933, is broad enough to deprive the District Court of jurisdiction whether vested by the provisions of the Tucker Act (28 U. S. C. A., § 41[20]) or under the provisions of the War Risk Insurance Act (38 U. S. C., § 445). Conceding that the policy of insurance is a contract it was subject to any provision of law subsequently enacted by Congress and appellant's constitutional rights were not impaired thereby. White vs. U. S., 270 U. S., 175.

Affirmed.

[fol. 42] IN UNITED STATES CIRCUIT COURT OF APPEALS, FIFTH CIRCUIT

No. 7071

MARGARET SHEA LYNCH

versus

UNITED STATES OF AMERICA

JUDGMENT—November 3, 1933

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Middle District of Georgia, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

[fol. 43] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

[Title omitted]

PETITION FOR REHEARING—Filed November 23, 1933

May it please the Court:

Mrs. Margaret Shea Lynch, Appellant, comes at the same term of this court at which the judgment of the District Court was affirmed, within twenty-one days of the date of the decision affirming said judgment, and respectfully tenders this petition for a rehearing of said case, and a reversal of the judgment below.

Appellant reiterates the contentions made by her in her original and reply briefs on all of the points at issue, and says that the case of White v. United States, 270 U. S. 175, is neither applicable nor controlling for the reasons, first, that the amending statute construed in the White case was a curative act carrying out the intention of the insured, not a repealing act destroying and nullifying the property of the insured, and second, that older decisions of the Supreme Court, controlling on this court, uniformly hold that rights vesting under a statute cannot be abrogated under a repeal-

ing statute in violation of the Fifth Amendment to the Constitution of the United States.

[fol. 44] In spite of the foregoing, however, Appellant does not abandon the contentions urged in her reply brief, that the Fifth Amendment is self-executing and that to invoke the War Risk Insurance Act or the Tucker Act is unnecessary. For the purposes of this and similar cases the provisions of the Fifth Amendment must be deemed self-executing.

"The rule is thus stated by Judge Cooley in his work upon Constitutional Limitations (p. 99): 'A constitutional provision may be said to be self-executing if it supplies a sufficient rule by means of which the right given may be enjoyed and protected, or the duty imposed may be enforced; and it is not self-executing when it merely indicates principles, without laying down rules by means of which those principles may be given the force of law. Thus, a constitution may very clearly require county and town government; but if it fails to indicate its range, and to provide proper machinery, it is not in this particular self-executing, and legislation is essential.'

"Where a constitutional provision is complete in itself it needs no further legislation to put it in force. When it lays down certain general principles, as to enact laws upon a certain subject, or for the incorporation of cities of certain population, or for uniform laws upon the subject of taxation, it may need more specific legislation to make it operative. In other words, it is self-executing only so far as it is susceptible of execution. But where a constitution asserts a certain right, or lays down a certain principle of law or procedure, it speaks for the entire people as their supreme law, and is full authority for all that is done in pursuance of its provisions. In short, if complete in itself, it executes itself."

Davis v. Burke, 179 U. S. 399, 403.

Appellant respectfully shows to the Court that other suits on War Risk Insurance [illegible] certificates have been brought in district courts of other states attacking the constitutionality of "an act to maintain the credit of the United States Government", but that such cases, so far as she knows or believes, have been determined without the necessity of passing upon the constitutional questions.

[fol. 45] The facts of the case at bar are undisputed, counsel for Appellee having adopted the statement of facts recited by Appellant in her original brief, and in order that the constitutional points may be considered at an early date by the Supreme Court of the United States, Appellant respectfully prays that this Court certify the question to the Supreme Court for an answer binding all concerned.

And Appellant will ever pray.

Respectfully submitted, John J. McCreary, Attorney for Appellant. Post Office: Macon, Georgia.

GEORGIA,
Bibb County:

I, John J. McCreary, of counsel for the Appellant herein, having carefully examined the opinion of the Honorable Court, do hereby certify that in my judgment the foregoing petition for a rehearing is well founded, and that the same is not interposed for delay.

This 20th day of November, 1933.

John J. McCreary, Counsel for Appellant.

Georgia,
Bibb County:

Service of the foregoing petition is acknowledged; copy received. All other and further service or notice waived.

This 21st day of November, 1933.

——— ———, U. S. Attorney, Counsel for Appellee.

Copy.

[fol. 46] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING REHEARING—December 14, 1933

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 47] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 48] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 9, 1934

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.